



January 30, 2006

SENATE BILL No. 322

DIGEST OF SB 322 (Updated January 26, 2006 12:47 pm - DI 102)

Citations Affected: IC 5-10; IC 5-10.3; IC 5-14; IC 10-12; noncode.

Synopsis: Forfeiture of public pensions for misconduct. Provides in certain circumstances for the forfeiture of all or a portion of a pension benefit from the state excise police, gaming agent, and conservation enforcement officers' retirement plan, the public employees' retirement fund, and the state police benefit system. Requires the respective boards that administer each of these funds to consider investigating a possible forfeiture whenever a fund member is convicted of a felony arising out of the fund member's service as a public officer or employee and involving an act of fraud, deceit, or abuse of the public trust resulting in a financial loss to the public or an unlawful benefit to an individual in the conduct of state business, bribery, official misconduct, or certain other offenses. Requires a board to wait until the entry of judgment of conviction before holding a public hearing to determine whether forfeiture is appropriate. Establishes due process requirements for a forfeiture hearing. Requires a majority vote by a board, based on clear and convincing evidence, to forfeit a pension benefit. Requires a board to: (1) issue a written determination; and (2) reduce the amount of a proposed forfeiture by the amount of any restitution made. Allows a fund member to request that the respective board reconsider a forfeiture determination. Provides for a new hearing if a fund member's conviction is reversed, vacated, or set aside. Provides for the return of a fund member's contributions with interest when the pension benefit is forfeited. Provides that the administrator's evidence concerning forfeiture is confidential until: (1) the fund member is notified of the forfeiture hearing; or (2) the fund member elects to have the records made public. Provides that a final determination of a board is available for inspection and copying.

Effective: July 1, 2006.

Kruse, Tallian, Rogers, Drozda

January 10, 2006, read first time and referred to Committee on Pensions and Labor.
January 30, 2006, amended, reported favorably — Do Pass.

SB 322—LS 6949/DI 102+



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January 30, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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SENATE BILL No. 322

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-10-5.5-22 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2006]: **Sec. 22. (a) As used in this section, "PERF board" refers**
4 **to the board of trustees of the public employees' retirement fund.**
5 **(b) A participant in the state excise police, gaming agent, and**
6 **conservation enforcement officers' retirement plan is expected to**
7 **render honorable service as a public officer or public employee.**
8 **(c) If a participant is convicted of any of the following crimes**
9 **arising out of the participant's service as a public officer or**
10 **employee, the PERF board shall take the actions described in**
11 **subsection (d):**
12 **(1) A felony involving an act of fraud, deceit, or abuse of the**
13 **public trust that results in a financial loss to the public or an**
14 **unlawful benefit to an individual in the conduct of state**
15 **business.**
16 **(2) Bribery (IC 35-44-1-1).**
17 **(3) Official misconduct (as defined in IC 35-44-1-2(1),**

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IC 35-44-1-2(2), IC 35-44-1-2(3), or IC 35-44-1-2(4)).

(4) Conflict of interest (IC 35-44-1-3).

(5) Computer tampering (IC 35-43-1-4).

(6) Identity deception (IC 35-43-5-3.5).

(7) Ghost employment (IC 35-44-2-4).

(8) An attempt or conspiracy to commit an offense listed in subdivisions (1) through (7).

(9) A crime in any other jurisdiction the elements of which are substantially similar to the elements of an offense listed in subdivisions (1) through (8).

(d) Whenever the PERF board receives evidence of a conviction under subsection (c), the PERF board shall consider beginning an investigation. If, after conducting an investigation, the PERF board decides, by a majority vote, to conduct further proceedings to determine whether forfeiture of all or part of the participant's annual retirement allowance is appropriate, the PERF board shall schedule a public hearing on the matter not later than sixty (60) days after the entry of judgment of conviction. The PERF board shall notify the participant not later than five (5) days after the public hearing is scheduled.

(e) If a public hearing is scheduled under subsection (d), the participant may examine and make copies of all evidence in the PERF board's possession relating to the possible forfeiture of all or a portion of the participant's annual retirement allowance.

(f) At a public hearing under subsection (d), the participant is entitled to appropriate due process protection consistent with IC 4-21.5, including the following:

(1) The right to be represented, at the participant's expense, by counsel.

(2) The right to call and examine witnesses.

(3) The right to introduce exhibits.

(4) The right to cross-examine opposing witnesses.

(g) In making a determination under subsection (d) to conduct further proceedings, the PERF board shall consider and balance the following factors against the goals of the public pension laws:

(1) The participant's length of service.

(2) The extent to which the participant's benefit has vested.

(3) The participant's duties.

(4) The participant's history of public service, including the public service covered by the state excise police, gaming agent, and conservation enforcement officers' retirement plan and other public employment or service completed by the

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participant.

(5) The nature of the misconduct, including the following:

(A) The seriousness of the misconduct.

(B) Whether the misconduct was a single offense or multiple offenses.

(C) Whether the misconduct was an isolated, one (1) time occurrence or a continuing event.

(6) The amount of the loss suffered by the state resulting from the participant's misconduct.

(7) The participant's role in the misconduct.

(8) The degree of the participant's moral turpitude, guilt, or culpability, including the participant's motives for and personal gain from the misconduct, and the extent of the participant's cooperation, if any, in the investigation of the misconduct.

(9) The availability and adequacy of other punishment or sanctions for the misconduct, including the extent to which restitution has been made or ordered.

(10) Other personal circumstances of the participant that bear on the justness of forfeiture.

(h) After a public hearing under subsection (d), the PERF board shall state its findings of fact. If the PERF board, based on clear and convincing evidence, finds by a majority vote that forfeiture of all or a portion of the participant's annual retirement allowance is appropriate, the PERF board shall, not later than thirty (30) days after the public hearing under subsection (d):

(1) issue a written determination that includes the PERF board's findings of fact; and

(2) provide a copy of the written determination to the participant.

(i) If the PERF board determines under subsection (h) that the forfeiture of all or part of the participant's annual retirement allowance is appropriate, the PERF board shall also determine whether forfeiture of all or part of the benefits to which a surviving spouse, parent, or dependent child of the participant would otherwise be entitled under this chapter is appropriate.

(j) If the PERF board determines under subsection (h) that a partial forfeiture of the participant's annual retirement allowance is warranted, the PERF board shall determine the percentage that will be applied, when the participant begins receiving an annual retirement allowance, to reduce the participant's annual retirement allowance calculated under section 10 or 12 of this

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chapter.

(k) In determining the amount of a forfeiture under this section, the PERF board must reduce the amount of the proposed forfeiture by the amount of any restitution made by the participant.

(l) If the PERF board has determined under this section that forfeiture of all or a portion of a participant's annual retirement allowance is appropriate, the participant may request that the PERF board reconsider its determination by filing a written request with the PERF board not later than fifteen (15) days after the date the PERF board issues its determination. The written request must state concisely the reasons the participant believes that the forfeiture is erroneous. After the PERF board receives the written request, the PERF board shall set the matter for a hearing. At the hearing, the participant is entitled to appropriate due process protection consistent with IC 4-21.5, including the right to be represented, at the participant's expense, by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. The PERF board shall rule on the request for reconsideration not later than thirty (30) days after the date of the hearing. The PERF board shall issue its ruling in writing and may:

- (1) affirm its determination that the forfeiture is appropriate;
- (2) modify its determination by reducing the amount of the forfeiture; or
- (3) vacate its determination that forfeiture is appropriate.

(m) If a participant's conviction is reversed, vacated, or set aside after the PERF board makes its final determination under this section that forfeiture of all or a portion of the participant's annual retirement allowance is appropriate, the PERF board's determination is automatically stayed, and the participant is entitled to a new hearing under this section.

(n) If a prosecuting attorney obtains a criminal conviction against an individual whom the prosecuting attorney:

- (1) knows to be; or
- (2) has reason to believe is;

a participant in the state excise police, gaming agent, and conservation enforcement officers' retirement plan, the prosecuting attorney shall notify the PERF board in writing of the conviction.

(o) A participant for whom forfeiture of all of the participant's annual retirement allowance is determined appropriate is entitled

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to the return of the participant's contributions to the fund with interest.

(p) The PERF board's evidence relating to an investigation under subsection (d) is confidential until the earlier of:

(1) the time the participant is notified of the PERF board's public hearing under subsection (d); or

(2) the time the participant elects to have the records made public.

(q) The PERF board's final determination under this section is available for inspection and copying under IC 5-14-3.

SECTION 2. IC 5-10.3-8-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 15. (a) This section does not apply to a member's annuity savings account (as described in IC 5-10.2-2-3).**

(b) A member of the fund is expected to render honorable service as a public officer or public employee.

(c) If a member is convicted of any of the following crimes arising out of the member's service as a public officer or employee, the board shall take the actions described in subsection (d):

(1) A felony involving an act of fraud, deceit, or abuse of the public trust that results in a financial loss to the public or an unlawful benefit to an individual in the conduct of state business.

(2) Bribery (IC 35-44-1-1).

(3) Official misconduct (as defined in IC 35-44-1-2(1), IC 35-44-1-2(2), IC 35-44-1-2(3), or IC 35-44-1-2(4)).

(4) Conflict of interest (IC 35-44-1-3).

(5) Computer tampering (IC 35-43-1-4).

(6) Identity deception (IC 35-43-5-3.5).

(7) Ghost employment (IC 35-44-2-4).

(8) An attempt or conspiracy to commit an offense listed in subdivisions (1) through (7).

(9) A crime in any other jurisdiction the elements of which are substantially similar to the elements of an offense listed in subdivisions (1) through (8).

(d) Whenever the board receives evidence of a conviction under subsection (c), the board shall consider beginning an investigation. If, after conducting an investigation, the board decides, by a majority vote, to conduct further proceedings to determine whether forfeiture of all or a portion of the member's retirement benefit is appropriate, the board shall schedule a public hearing on the matter not later than sixty (60) days after the entry of

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1 judgment of conviction. The board shall notify the member not
2 later than five (5) days after the public hearing is scheduled.

3 (e) If a public hearing is scheduled under subsection (d), the
4 member may examine and make copies of all evidence in the
5 board's possession relating to the possible forfeiture of all or a
6 portion of the member's retirement benefit.

7 (f) At a public hearing under subsection (d), the member is
8 entitled to appropriate due process protection consistent with
9 IC 4-21.5, including the following:

10 (1) The right to be represented, at the member's expense, by
11 counsel.

12 (2) The right to call and examine witnesses.

13 (3) The right to introduce exhibits.

14 (4) The right to cross-examine opposing witnesses.

15 (g) In making a determination under subsection (d) to conduct
16 further proceedings, the board shall consider and balance the
17 following factors against the goals of the public pension laws:

18 (1) The member's length of service.

19 (2) The extent to which the member's benefit has vested.

20 (3) The member's duties.

21 (4) The member's history of public service, including the
22 public service covered by the fund and other public
23 employment or service completed by the member.

24 (5) The nature of the misconduct, including the following:

25 (A) The seriousness of the misconduct.

26 (B) Whether the misconduct was a single offense or
27 multiple offenses.

28 (C) Whether the misconduct was an isolated, one (1) time
29 occurrence or a continuing event.

30 (6) The amount of the loss suffered by the state resulting from
31 the member's misconduct.

32 (7) The member's role in the misconduct.

33 (8) The degree of the member's moral turpitude, guilt, or
34 culpability, including the member's motives for and personal
35 gain from the misconduct, and the extent of the member's
36 cooperation, if any, in the investigation of the misconduct.

37 (9) The availability and adequacy of other punishment or
38 sanctions for the misconduct, including the extent to which
39 restitution has been made or ordered.

40 (10) Other personal circumstances of the member that bear
41 on the justness of forfeiture.

42 (h) After a public hearing under subsection (d), the board shall

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1 state its findings of fact. If the board, based on clear and
 2 convincing evidence, finds by a majority vote that forfeiture of all
 3 or a portion of the member's retirement benefit is appropriate, the
 4 board shall, not later than thirty (30) days after the public hearing
 5 under subsection (d):

6 (1) issue a written determination that includes the board's
 7 findings of fact; and

8 (2) provide a copy of the written determination to the
 9 member.

10 (i) If the board determines under subsection (h) that the
 11 forfeiture of all or a portion of the member's retirement benefit is
 12 appropriate, the board shall also determine whether forfeiture of
 13 all or a portion of the benefits to which a surviving spouse,
 14 dependent, or beneficiary of the member would otherwise be
 15 entitled under this article is appropriate.

16 (j) If the board determines under subsection (h) that a partial
 17 forfeiture of the member's retirement benefit is warranted, the
 18 board shall determine the percentage that will be applied, when the
 19 member begins receiving a retirement benefit, to reduce the
 20 member's retirement benefit as calculated under section 1 of this
 21 chapter.

22 (k) In determining the amount of a forfeiture under this section,
 23 the board must reduce the amount of the proposed forfeiture by
 24 the amount of any restitution made by the member.

25 (l) If the board has determined that forfeiture of all or a portion
 26 of a member's retirement benefit is appropriate, the member may
 27 request that the board reconsider its determination by filing a
 28 written request with the board not later than fifteen (15) days after
 29 the date the board issues its determination. The written request
 30 must state concisely the reasons why the member believes that the
 31 forfeiture is erroneous. After the board receives the written
 32 request, the board shall set the matter for a hearing. At the
 33 hearing, the member is entitled to appropriate due process
 34 protection consistent with IC 4-21.5, including the right to be
 35 represented, at the member's expense, by counsel, the right to call
 36 and examine witnesses, the right to introduce exhibits, and the
 37 right to cross-examine opposing witnesses. The board shall rule on
 38 the request for reconsideration not later than thirty (30) days after
 39 the date of the hearing. The board shall issue its ruling in writing
 40 and may:

41 (1) affirm its determination that the forfeiture is appropriate;

42 (2) modify its determination by reducing the amount of the

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forfeiture; or

(3) vacate its determination that forfeiture is appropriate.

(m) If a member's conviction is reversed, vacated, or set aside after the board makes its final determination under this section that forfeiture of all or a portion of the member's retirement benefit is appropriate, the board's determination is automatically stayed, and the member is entitled to a new hearing under this section.

(n) If a prosecuting attorney obtains a criminal conviction against an individual whom the prosecuting attorney:

(1) knows to be; or

(2) has reason to believe is;

a member of the fund, the prosecuting attorney shall notify the board in writing of the conviction.

(o) The board's evidence relating to an investigation under subsection (d) is confidential until the earlier of:

(1) the time the member is notified of the board's hearing under subsection (d); or

(2) the time the member elects to have the records made public.

(p) The board's final determination under this section is available for inspection and copying under IC 5-14-3.

SECTION 3. IC 5-14-3-4, AS AMENDED BY P.L.210-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.

(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

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(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the ~~twenty-first century research and technology fund board of the~~ **Indiana economic development corporation** under ~~IC 4-4-5.1.~~ **IC 5-28-16.**

(11) A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.

(12) A Social Security number contained in the records of a public agency.

(13) Records containing information about whether forfeiture of all or a portion of the retirement benefit, allowance, or pension of a member or participant of:

(A) the state excise police, gaming agent, and conservation enforcement officers' retirement plan established by IC 5-10-5.5-2;

(B) the public employees' retirement fund established by IC 5-10.3-2-1; or

(C) the state police benefit system established by IC 10-12-2-2;

is appropriate, until the fund member or participant is notified of a public hearing on the matter, or the fund member or participant elects to have the records made public. A final determination by the administrator of the public pension fund is available for inspection and copying.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used

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in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of the person's scores.

(5) The following:

(A) Records relating to negotiations between the Indiana economic development corporation, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the Indiana economic development corporation, the Indiana development finance authority, the Indiana film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the Indiana economic development corporation shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

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- 1 (C) the factual basis for a disciplinary action in which final
 2 action has been taken and that resulted in the employee being
 3 suspended, demoted, or discharged.
- 4 However, all personnel file information shall be made available
 5 to the affected employee or the employee's representative. This
 6 subdivision does not apply to disclosure of personnel information
 7 generally on all employees or for groups of employees without the
 8 request being particularized by employee name.
- 9 (9) Minutes or records of hospital medical staff meetings.
- 10 (10) Administrative or technical information that would
 11 jeopardize a record keeping or security system.
- 12 (11) Computer programs, computer codes, computer filing
 13 systems, and other software that are owned by the public agency
 14 or entrusted to it and portions of electronic maps entrusted to a
 15 public agency by a utility.
- 16 (12) Records specifically prepared for discussion or developed
 17 during discussion in an executive session under IC 5-14-1.5-6.1.
 18 However, this subdivision does not apply to that information
 19 required to be available for inspection and copying under
 20 subdivision (8).
- 21 (13) The work product of the legislative services agency under
 22 personnel rules approved by the legislative council.
- 23 (14) The work product of individual members and the partisan
 24 staffs of the general assembly.
- 25 (15) The identity of a donor of a gift made to a public agency if:
 26 (A) the donor requires nondisclosure of the donor's identity as
 27 a condition of making the gift; or
 28 (B) after the gift is made, the donor or a member of the donor's
 29 family requests nondisclosure.
- 30 (16) Library or archival records:
 31 (A) which can be used to identify any library patron; or
 32 (B) deposited with or acquired by a library upon a condition
 33 that the records be disclosed only:
 34 (i) to qualified researchers;
 35 (ii) after the passing of a period of years that is specified in
 36 the documents under which the deposit or acquisition is
 37 made; or
 38 (iii) after the death of persons specified at the time of the
 39 acquisition or deposit.
- 40 However, nothing in this subdivision shall limit or affect contracts
 41 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 42 (17) The identity of any person who contacts the bureau of motor

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vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing medical advisory board regarding the ability of a driver to operate a motor vehicle safely. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(19) A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes:

(A) a record assembled, prepared, or maintained to prevent, mitigate, or respond to an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2;

(B) vulnerability assessments;

(C) risk planning documents;

(D) needs assessments;

(E) threat assessments;

(F) domestic preparedness strategies;

(G) the location of community drinking water wells and surface water intakes;

(H) the emergency contact information of emergency responders and volunteers;

(I) infrastructure records that disclose the configuration of critical systems such as communication, electrical, ventilation, water, and wastewater systems; and

(J) detailed drawings or specifications of structural elements, floor plans, and operating, utility, or security systems, whether in paper or electronic form, of any building or facility located on an airport (as defined in IC 8-21-1-1) that is owned, occupied, leased, or maintained by a public agency. A record described in this clause may not be released for public inspection by any public agency without the prior approval of the public agency that owns, occupies, leases, or maintains the airport. The public agency that owns, occupies, leases, or maintains the airport:

(i) is responsible for determining whether the public disclosure of a record or a part of a record has a reasonable

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likelihood of threatening public safety by exposing a vulnerability to terrorist attack; and

(ii) must identify a record described under item (i) and clearly mark the record as "confidential and not subject to public disclosure under IC 5-14-3-4(b)(19)(J) without approval of (insert name of submitting public agency)".

This subdivision does not apply to a record or portion of a record pertaining to a location or structure owned or protected by a public agency in the event that an act of terrorism under IC 35-47-12-1 or an act of agricultural terrorism under IC 35-47-12-2 has occurred at that location or structure, unless release of the record or portion of the record would have a reasonable likelihood of threatening public safety by exposing a vulnerability of other locations or structures to terrorist attack.

(20) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Address.

(C) Social Security number.

(21) The following personal information about a complainant contained in records of a law enforcement agency:

(A) Telephone number.

(B) The complainant's address. However, if the complainant's address is the location of the suspected crime, infraction, accident, or complaint reported, the address shall be made available for public inspection and copying.

(c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(d) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(e) Notwithstanding subsection (d) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 4. IC 10-12-2-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 10.5. (a) An employee beneficiary is expected to render honorable service as a public officer or public**

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employee.

(b) If an employee beneficiary is convicted of any of the following crimes arising out of the employee beneficiary's service as a public officer or employee, the pension advisory board shall take the actions described in subsection (c):

(1) A felony involving an act of fraud, deceit, or abuse of the public trust that results in a financial loss to the public or an unlawful benefit to an individual in the conduct of state business.

(2) Bribery (IC 35-44-1-1).

(3) Official misconduct (as defined in IC 35-44-1-2(1), IC 35-44-1-2(2), IC 35-44-1-2(3), or IC 35-44-1-2(4)).

(4) Conflict of interest (IC 35-44-1-3).

(5) Computer tampering (IC 35-43-1-4).

(6) Identity deception (IC 35-43-5-3.5).

(7) Ghost employment (IC 35-44-2-4).

(8) An attempt or conspiracy to commit an offense listed in subdivisions (1) through (7).

(9) A crime in any other jurisdiction the elements of which are substantially similar to the elements of an offense listed in subdivisions (1) through (8).

(c) When the pension advisory board receives evidence of a conviction under subsection (b), the pension advisory board shall consider beginning an investigation. If, after conducting an investigation, the pension advisory board decides to conduct further proceedings to determine whether forfeiture of all or part of the employee beneficiary's monthly pension amount is appropriate, the pension advisory board shall schedule a public hearing on the matter not later than sixty (60) days after the entry of judgment of conviction. The pension advisory board shall notify the employee beneficiary not later than five (5) days after the public hearing is scheduled.

(d) If a public hearing is scheduled under subsection (c), the employee beneficiary may examine and make copies of all evidence in the pension advisory board's possession relating to the possible forfeiture of all or a portion of the employee beneficiary's monthly pension amount.

(e) At the public hearing under subsection (c), the employee beneficiary is entitled to appropriate due process protection consistent with IC 4-21.5, including the following:

(1) The right to be represented, at the employee beneficiary's expense, by counsel.

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1 (2) The right to call and examine witnesses.

2 (3) The right to introduce exhibits.

3 (4) The right to cross-examine opposing witnesses.

4 (f) In making a determination under subsection (c) to conduct
5 further proceedings, the pension advisory board shall consider and
6 balance the following factors against the goals of the public pension
7 laws:

8 (1) The employee beneficiary's length of service.

9 (2) The extent to which the employee beneficiary's benefit has
10 vested.

11 (3) The employee beneficiary's duties.

12 (4) The employee beneficiary's history of public service,
13 including the public service covered by the pension trust and
14 other public employment or service completed by the
15 employee beneficiary.

16 (5) The nature of the misconduct, including the following:

17 (A) The seriousness of the misconduct.

18 (B) Whether the misconduct was a single offense or
19 multiple offenses.

20 (C) Whether the misconduct was an isolated, one (1) time
21 occurrence or a continuing event.

22 (6) The amount of the loss suffered by the state resulting from
23 the employee beneficiary's misconduct.

24 (7) The employee beneficiary's role in the misconduct.

25 (8) The degree of the employee beneficiary's moral turpitude,
26 guilt, or culpability, including the employee beneficiary's
27 motives for and personal gain from the misconduct, and the
28 extent of the employee beneficiary's cooperation, if any, in the
29 investigation of the misconduct.

30 (9) The availability and adequacy of other punishment or
31 sanctions for the misconduct, including the extent to which
32 restitution has been made or ordered.

33 (10) Other personal circumstances of the employee
34 beneficiary that bear on the justness of forfeiture.

35 (g) After a public hearing under subsection (c), the pension
36 advisory board shall state its findings of fact. If the pension
37 advisory board, based on clear and convincing evidence, finds that
38 forfeiture of all or a portion of the employee beneficiary's monthly
39 pension amount is appropriate, the pension advisory board shall,
40 not later than thirty (30) days after the public hearing under
41 subsection (c):

42 (1) issue a written determination that includes the pension

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advisory board's findings of fact; and

(2) provide a copy of the written determination to the employee beneficiary.

(h) If the pension advisory board determines under subsection (g) that the forfeiture of all or a portion of the employee beneficiary's monthly pension amount is appropriate, the pension advisory board shall also determine whether forfeiture of all or a portion of the benefits to which a surviving spouse or dependent child of the employee beneficiary would otherwise be entitled under this article is appropriate.

(i) If the pension advisory board determines under subsection (g) that a partial forfeiture of the employee beneficiary's monthly pension amount is warranted, the pension advisory board shall determine the percentage that will be applied, when the employee beneficiary begins receiving a monthly pension amount, to reduce the employee beneficiary's monthly pension amount calculated under IC 10-12-3-7 or IC 10-12-4-7.

(j) In determining the amount of a forfeiture under this section, the pension advisory board must reduce the amount of the proposed forfeiture by the amount of any restitution made by the employee beneficiary.

(k) If the pension advisory board has determined that forfeiture of all or a portion of an employee beneficiary's monthly pension amount is appropriate, the employee beneficiary may request that the pension advisory board reconsider its determination by filing a written request with the pension advisory board not later than fifteen (15) days after the date the pension advisory board issues its determination. The written request must state concisely the reasons why the employee beneficiary believes that the forfeiture is erroneous. After the pension advisory board receives the written request, the pension advisory board shall set the matter for a hearing. At the hearing, the employee beneficiary is entitled to appropriate due process protection consistent with IC 4-21.5, including the right to be represented, at the employee beneficiary's expense, by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. The pension advisory board shall rule on the request for reconsideration not later than thirty (30) days after the date of the hearing. The pension advisory board may:

(1) affirm its determination that the forfeiture is appropriate;

(2) modify its determination by reducing the amount of the forfeiture; or

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1 (3) vacate its determination that forfeiture is appropriate.

2 (l) If an employee beneficiary's conviction is reversed, vacated,
3 or set aside after the pension advisory board makes its final
4 determination under this section that forfeiture of all or a portion
5 of the employee beneficiary's monthly pension amount is
6 appropriate, the pension advisory board's determination is
7 automatically stayed, and the employee beneficiary is entitled to a
8 new hearing under this section.

9 (m) If a prosecuting attorney obtains a criminal conviction
10 against an individual whom the prosecuting attorney:

11 (1) knows to be; or

12 (2) has reason to believe is;

13 an employee beneficiary of the pension trust, the prosecuting
14 attorney shall notify the pension advisory board in writing of the
15 conviction.

16 (n) An employee beneficiary for whom forfeiture of all of the
17 employee beneficiary's monthly pension benefit is determined
18 appropriate is entitled to the return of the employee beneficiary's
19 contributions to the trust fund with interest.

20 (o) The pension advisory board's evidence relating to an
21 investigation under subsection (c) is confidential until the earlier
22 of:

23 (1) the time the employee beneficiary is notified of the pension
24 advisory board's public hearing under subsection (c); or

25 (2) the time the employee beneficiary elects to have the
26 records made public.

27 (p) The pension advisory board's final determination under this
28 section is available for inspection and copying under IC 5-14-3.

29 SECTION 5. [EFFECTIVE JULY 1, 2006] IC 5-10-5.5-22,
30 IC 5-10.3-8-15, and IC 10-12-2-10.5, all as added by this act, and
31 IC 5-14-3-4, as amended by this act, apply to misconduct that
32 occurs after June 30, 2006.

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SENATE MOTION

Madam President: I move that Senators Tallian and Rogers be added as coauthors of Senate Bill 322.

KRUSE

SENATE MOTION

Madam President: I move that Senator Drozda be added as coauthor of Senate Bill 322.

KRUSE

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 322, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 8, delete ":" and insert **"any of the following crimes arising out of the participant's service as a public officer or employee, the PERF board shall take the actions described in subsection (d):"**.

Page 1, line 9, after "(1)" delete "a" and insert "A".

Page 1, line 12, delete ";" and insert ".".

Page 1, line 13, delete "bribery" and insert **"Bribery"**.

Page 1, line 13, delete ";" and insert ".".

Page 1, line 14, delete "official" and insert **"Official"**.

Page 1, line 15, delete ";" and insert ".".

Page 1, line 16, delete "conflict" and insert **"Conflict"**.

Page 1, line 16, delete ";" and insert ".".

Page 1, line 17, delete "computer" and insert **"Computer"**.

Page 1, line 17, delete ";" and insert ".".

Page 2, line 1, delete "identity" and insert **"Identity"**.

Page 2, line 1, delete ";" and insert ".".

Page 2, line 2, delete "ghost" and insert **"Ghost"**.

Page 2, line 2, delete ";" and insert ".".

Page 2, line 3, after "(8)" delete "an" and insert **"An"**.

Page 2, line 4, delete "; or" and insert ".".

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Page 2, line 5, delete "a" and insert "A".

Page 2, line 7, delete ";" and insert ".".

Page 2, delete line 8.

Page 3, line 6, delete "relationship between the misconduct and the" and insert **"amount of the loss suffered by the state resulting from the participant's misconduct."**

Page 3, delete line 7.

Page 5, line 15, delete ":" and insert **"any of the following crimes arising out of the member's service as a public officer or employee, the board shall take the actions described in subsection (d):"**

Page 5, line 16, after "(1)" delete "a" and insert "A".

Page 5, line 19, delete ";" and insert ".".

Page 5, line 20, delete "bribery" and insert **"Bribery"**.

Page 5, line 20, delete ";" and insert ".".

Page 5, line 21, delete "official" and insert **"Official"**.

Page 5, line 22, delete ";" and insert ".".

Page 5, line 23, delete "conflict" and insert **"Conflict"**.

Page 5, line 23, delete ";" and insert ".".

Page 5, line 24, delete "computer" and insert **"Computer"**.

Page 5, line 24, delete ";" and insert ".".

Page 5, line 25, delete "identity" and insert **"Identity"**.

Page 5, line 25, delete ";" and insert ".".

Page 5, line 26, delete "ghost" and insert **"Ghost"**.

Page 5, line 26, delete ";" and insert ".".

Page 5, line 27, after "(8)" delete "an" and insert **"An"**.

Page 5, line 28, delete "; or" and insert ".".

Page 5, line 29, delete "a" and insert "A".

Page 5, line 31, delete ";" and insert ".".

Page 5, delete line 32.

Page 6, line 27, delete "relationship between the misconduct and the" and insert **"amount of the loss suffered by the state resulting from the member's misconduct."**

Page 6, delete line 28.

Page 13, line 41, delete ":" and insert **"any of the following crimes arising out of the employee beneficiary's service as a public officer or employee, the pension advisory board shall take the actions described in subsection (c):"**

Page 13, line 42, after "(1)" delete "a" and insert "A".

Page 14, line 3, delete ";" and insert ".".

Page 14, line 4, delete "bribery" and insert **"Bribery"**.

Page 14, line 4, delete ";" and insert ".".

Page 14, line 5, delete "official" and insert **"Official"**.

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Page 14, line 6, delete ";" and insert ".".
 Page 14, line 7, delete "conflict" and insert "**Conflict**".
 Page 14, line 7, delete ";" and insert ".".
 Page 14, line 8, delete "computer" and insert "**Computer**".
 Page 14, line 8, delete ";" and insert ".".
 Page 14, line 9, delete "identity" and insert "**Identity**".
 Page 14, line 9, delete ";" and insert ".".
 Page 14, line 10, delete "ghost" and insert "**Ghost**".
 Page 14, line 10, delete ";" and insert ".".
 Page 14, line 11, after "(8)" delete "an" and insert "**An**".
 Page 14, line 12, delete "; or" and insert ".".
 Page 14, line 13, delete "a" and insert "**A**".
 Page 14, line 15, delete ";" and insert ".".
 Page 14, delete lines 16 and 17.

Page 15, line 18, delete "relationship between the misconduct and the employee" and insert "**amount of the loss suffered by the state resulting from the employee beneficiary's misconduct.**".

Page 15, delete line 19.

and when so amended that said bill do pass.

(Reference is to SB 322 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 6, Nays 4.

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